IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1247 OF 2003

Shri Bapu Janardan Mungekar ...Petitioner.

V/s

1. Sou. Sunita Bapu Mungekar
& Anr. ...Respondents.

Smt. Smita Deshpande for the petitioner.

Mr. Rajesh Parab for respondent No.1.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 28th February 2005

P.C.:

1. Heard the learned Counsel appearing for the petitioner and the learned counsel for respondent No.1.

2. Petitioner is challenging the order passed by the Sessions Judge who was pleased to reject the Criminal Revision Application filed by the petitioner.

3. The marriage between the petitioner and respondent No.1 was solemnized on 2/1/1994. According to the petitioner, respondent No.1 deserted him and refused to come back to the matrimonial house. He, therefore, sent a notice to respondent No.1 dated 3/7/1995 calling upon her to come back to the matrimonial house. Respondent No.1 filed Criminal Application on

24/4/2000 for maintenance under section 125 of the Criminal Procedure Code which was allowed on 2/8/2000 and the JMFC directed the petitioner to pay maintenance at the rate of Rs 600/- per month to the respondent No.1. The petitioner preferred a Revision Application in the Sessions Court, Sindhudurg. This Revision Application was also rejected.

4. It is contended by the learned counsel appearing on behalf of the petitioner that both the courts below had not taken into consideration the fact that the respondent No.1 herself had deserted the petitioner and had refused to stay with him in his matrimonial house and, therefore, there was no wilful negligence or refusal on his part to maintain the respondent No.1. It is submitted that since respondent No.1 had not proved this fact, she was not entitled to get any maintenance. The learned Counsel appearing on behalf of the petitioner further submitted that respondent No.1 had suppressed her age at the time of marriage and that she was, in fact, elder to him by about more than 15 years. Thus, there was suppression of fact by the respondent No.1. On that count also, she was not entitled to claim maintenance. The learned Counsel for the petitioner further submitted that respondent No.1 was living in adultery with one Chandrakant

Bhovar and on that count also, on account of her conduct, she was not entitled to get maintenance.

5. The learned Counsel appearing on behalf of respondent No.1, however, submitted that both the courts had considered all these aspects and had given finding of fact on these points. He submitted that the petitioner had admitted in his cross-examination that he was aware at the time of his marriage that respondent No.1 was elder to him. He further submitted that respondent No.1 was residing with her sister and that there was no evidence to show that she was living in adultery.

6. I have perused the judgment and order of the Sessions Court as also the JMFC, Malvan. So far as the contention of the petitioner regarding suppressing the age by respondent No.1 is concerned, from the statement of the petitioner in his cross-examination, it can be seen that he has admitted that his marriage was solemnized with respondent No.1 with his consent and that he had no grievance about the age of respondent No.1 at the time of his marriage. From the evidence of respondent No.1, it can be seen that the petitioner did not take her back in the matrimonial house and that she had to stay with her sister. In

her evidence she had stated that though she had gone to her matrimonial house after she received the notice from the petitioner, he did not take her back and, therefore, she came back to her house. She has further stated that the petitioner had married again for the second time and, therefore, it was not now possible for her to go back and stay with him. From the evidence, it can be seen that she is residing with one of her sisters and the said Chandrakant Bhovar is an old retired person and there is no evidence of adultery brought on record. In these circumstances, no case is made out by the petitioner. I do not see any reason to interfere with the concurrent finding recorded by both the courts below. Petition is dismissed.

V.M. KANADE, J.